

## **SERVICES AGREEMENT**

### **I.**

This Agreement sets forth the proposed terms, and if accepted by the **City of College Station, a home-rule municipal corporation organized under the laws of Texas** (hereinafter referred to as "Client") as provided below, will constitute our Agreement regarding the objectives and terms of the Client's engagement of **Dean International, Inc., a Texas Corporation** (hereinafter referred to as "Firm"), an independent consultant to perform the following services, and Client's obligation to pay Firm for said services rendered and expenses incurred on Client's behalf:

- 1) Create a proactive public policy strategy, which will place College Station at the forefront of transportation public policy development in the Brazos Valley and throughout the State of Texas. Assist in the developing and strengthening of positive working relationships with officials and decision makers at all levels of Government. Routinely deal with Texas House and Senate, Texas Governors Office, TTC, U.S. Congress and Senate, FHWA, EPA and related transportation related agencies and entities that affect the City of College Station's transportation agenda;

These efforts will assist in maximizing the receipt of discretionary, program and formula transportation funds, expediting projects, and creating new opportunities for partnerships that are currently not available;

- 2) Mass Transit – Perform for the City of College Station a comprehensive study and evaluation of existing mass transit services including comparison with similar size communities, mass transit options available under state law, federal funding opportunities, etc.;
- 3) Maximize the City of College Station's ability to work locally and regionally through existing structures and organizations such as the Bryan/College Station Metropolitan Planning Organization and the Brazos Valley COG. Regional transportation issues, particularly roads, rail, and aviation, will be greatly determined by the ability of the City of College Station to effectively work within these existing regional organizations;
- 4) Facilitate and assist in identifying all potential sources of local, regional, state and federal and private sector funding sources to assist the City of College Station in accomplishing its transportation goals and objectives;
- 5) In coordination with city staff, develop a comprehensive project evaluation and ranking process that will assist the city staff and city council to establish and maintain a focus on priority transportation projects that have been determined to be of strategic priority to the City of College Station;

- 6) Assist the City of College Station in planning and executing annual strategic missions to Austin and Washington, D.C. to petition executive and legislative branch leaders for assistance in meeting the City of College Station's transportation related goals and objectives, and prepare periodic written reports regarding the above described initiatives as directed by the City Manager; and
- 7) Any other services mutually agreed upon by Client and Firm in writing subject to the limitations set out in Section II, paragraph 3 hereinbelow.

## II.

In return for such services, Client agrees to pay the Firm as follows:

For services outlined in Parts 1)-6) above, an annual fee in the amount of Two Hundred Forty Thousand Dollars (\$240,000.00), plus expenses incurred to carry out the services performed. Payments will be made monthly in the amount of Twenty Thousand Dollars (\$20,000.00) (hereinafter referred to as "Monthly Fee"). Initially, on the execution of the Agreement by Client and Firm, and subsequently on the first day of each month thereafter for twelve months, constituting the twelve consecutive monthly payments (the "Engagement Term").

At the end of the Engagement Term or Renewal Engagement Term (defined below), if any thereafter, this Fee Agreement may be renewed for an additional period of twelve (12) consecutive months ("Renewal Engagement Term") by means of a written agreement executed by both Client and the Firm at least sixty (60) days prior to termination of the Engagement Term.

In the event of withdrawal by Client during the Engagement Term or any Renewal Engagement Term, Client shall immediately pay to the Firm the remainder of the Monthly Fees due for the balance of the Engagement Term or Renewal Engagement Term plus any actual expenses reasonably incurred to carry out the services performed for Client.

For services outlined in Section I, Part 7) above, which must be initiated by the Client and agreed to in writing by both the Client and the Firm, a fee based on Firm's billing rates and charges for personnel of the Firm, plus expenses incurred in performing the services shall be specified in writing pursuant to Section VII. Firm shall bill Client monthly according to an agreed upon, written billing schedule for services rendered, based on Firm's hourly billing rates. Client understands that said billing rates at the time of entering into this Agreement range from \$150.00 to \$350.00 per hour for senior consultants and from \$75.00 to \$200.00 per hour for associate public policy consultants and administrative assistants. Client agrees to pay said fees and expenses promptly, and in no event later than 20 days after statement from Firm is received by Client except items for which Client has requested additional information which will be paid within twenty days after Client has received the information requested from the Firm. Furthermore, for services outlined in Section I, Part 7) above, Client may make any

deductions from the billing concerning services that have not been specifically requested or approved by the City Manager if less than \$25,000.00 or the College Station City Council if greater than \$25,000.00 or expenses that do not detail that they are actual expenditures or unreasonable and shall not be considered a breach of this agreement.

### **III.**

For purposes of this agreement expenses shall mean all detailed actual expenses reasonably incurred in performing the services in Section I, Nos. 1-6 and any additional services in No. 7 duly authorized as provided in Section II, paragraph III, travel expenses, photocopying, printing, car expenses, postage, long distance calls and telephone charges, binding costs, courier and special delivery services, word processing costs, and other actual de minimus out-of-pocket expenses reasonably incurred with such matters. The Firm agrees to provide Client with an itemized listing by subject matter for expenses incurred during each billing period. City may request Firm provide all back-up receipts and information to substantiate said expenditures. In no event shall the total amount of expenses in items 1-6 in Section I exceed 15% of the annual fee or \$36,000.00 for the twelve-month period without written authorization from Client.

### **IV.**

The Firm shall render a statement to Client on or before the tenth (10<sup>th</sup>) day of each month itemizing services performed and expenses incurred during the prior thirty (30) day period. Client agrees that payment of expenses will occur promptly, and in no event later than twenty (20) days after statement from Firm is received by Client except items for which Client has requested additional information which shall be paid within twenty (20) days after additional information has been received and any billing adjustments have been made by Firm. Client agrees to review expenses upon receipt and to communicate with Firm if additional information is necessary for its review. This information shall be promptly forwarded by firm upon Client's request.

### **V.**

Except where bills have not been paid because additional information has been requested or erroneous billing, Client agrees that the Firm, upon notice of non-payment and opportunity by Client to remit payment for overdue bill within ten (10) days of receipt of notice, shall be entitled to withdraw from the engagement upon failure of Client to make timely payments as required by the Fee Agreement. Client shall be entitled to terminate and withdraw from this agreement for any reason upon ten (10) days written notice by Client to the Firm. In the event of withdrawal by Client, Client shall promptly pay to the Firm all outstanding fees and expenses and comply with the fees and provisions of part II above.

In the event of withdrawal by Firm for failure of Client to make timely payments as required in paragraph V., Client shall promptly pay to the Firm all outstanding fees and expenses, plus any expenses incurred less deductions made by Client authorized under

this agreement (as defined in Part III above) and comply with the terms and provisions of Part II above.

#### **VI.**

Client recognizes that nothing in this Fee Agreement and nothing in Firm's statements to Client will be construed as a promise or a guarantee concerning the outcome of Client's matter. Firm makes no such promises or guarantees but does warrant and represent that it will use its best efforts and exercise due diligence in the pursuit of Client's services specified herein in providing the services specified herein. Firm's comments about the outcome of Client's matters represent an expression of opinion only based on its experience and expertise in the providing of such services.

#### **VII.**

Client recognizes that Firm's entitlement to payment of fees and expenses is not contingent upon the results obtained or the final disposition of the services for which Firm has been retained.

#### **VIII.**

Client recognizes that the working papers assembled and accumulated by Firm in connection with this representation belong to and remain the property of Firm. Client has access to and may obtain copies of Firm's working papers promptly as necessary for its use and nothing in this agreement shall limit the Client's right to obtain or reuse said materials by its officers, agents, or consultants.

#### **IX.**

Client and Firm may amend or modify the Fee Agreement at any time so long as such amendment or modification is reduced to writing and is mutually agreed upon by Client and Firm and is approved by the City of College Station City Council.

#### **X.**

##### **Assignment**

During the term of this Agreement, this Agreement may not be assigned by Firm without the consent of Client.

#### **XI.**

##### **Invalidity**

If any provision of this Agreement shall be held to be invalid, illegal or unenforceable by a court or other tribunal of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The parties shall use their best efforts to replace the respective provision or provisions of this Agreement with legal terms and conditions approximating the original intent of the parties.

**XII.**  
**Written Notice**

All notices required by this Agreement (i) shall be in writing, (ii) shall be addressed to the parties as set forth below unless notified in writing of a change in address. The address of the parties is as follows:

To Client:                      City of College Station  
                                        P. O. Box 9960  
                                        College Station, Texas 77842  
                                        Attn: Mayor Lynn McIlhaney

To Firm:                         Dean International, Inc.  
                                        8080 Park Lane, Suite 600  
                                        Dallas, Texas 75231  
                                        Attn: David Dean

**XIII.**  
**Entire Agreement**

It is understood that this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements, or understandings, written or oral, between the parties relating to the subject matter. No oral understandings, statements, promises or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally. No verbal agreement or conversation with any officer, agent or employee of the Client, either before or after the execution of this Agreement, shall affect or modify any of the terms or obligations hereunder.

**XIV.**  
**Texas Law**

This Agreement has been made under and shall be governed by the laws of the State of Texas.

**XV.**  
**Place of Employment**

Performance and all matters related thereto shall be in Brazos County, Texas, United States of America.

**XVI.**  
**Authority to Contract**

Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement

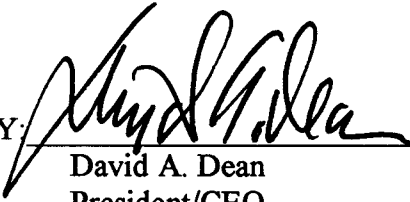
hereby represent that they have authorization to sign on behalf of their respective corporations.

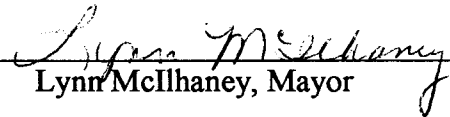
**XVII.  
Waiver**

Failure of any party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in any way affect the validity of this Agreement, any part hereof, or the right of the party thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.

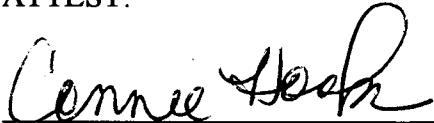
**DEAN INTERNATIONAL, INC.**

**CITY OF COLLEGE STATION**


BY:   
David A. Dean  
President/CEO

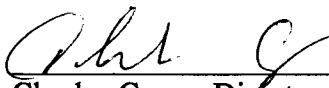
BY:   
Lynn McIlhaney, Mayor


ATTEST:

  
City Secretary

APPROVED:

  
Thomas E. Brymer, City Manager  
Date: 1-12-01

  
Charles Cryan, Director of Fiscal Services  
Date: 1-11-01

  
City Attorney  
Date: 1/10/01

THE STATE OF TEXAS  
COUNTY OF BRAZOS

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ACKNOWLEDGMENT

BEFORE ME, the undersigned authority, on this day personally appeared LYNN McILHANEY, as Mayor of the CITY OF COLLEGE STATION, a Texas home-rule municipal corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 16<sup>th</sup> day of January, 2000. 2001.



Priscilla Elaine Henchel  
Notary Public in and for the State of Texas

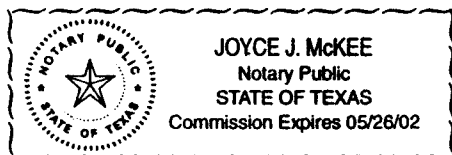
THE STATE OF TEXAS  
COUNTY OF BRAZOS

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ACKNOWLEDGMENT

BEFORE ME, the undersigned authority, on this day personally appeared DAVID A. DEAN, as President/CEO of DEAN INTERNATIONAL, INC., a Texas corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 22nd day of January, 2000. 2001



Joyce J. McKee  
Notary Public in and for the State of Texas

ACCEPTED this 22nd day of January, 2001. UPON EXECUTION  
THIS AGREEMENT BECOMES EFFECTIVE January 1, 2001.